

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

RESPONSE TO DEFENDANT'S MOTIONS TO SEAL [ECF NO. 732]

Defendant Google LLC (“Google”) has moved pursuant to Local Civil Rule 5(C) to seal portions of Exhibit 22 to its Reply in Support of Its Motion to Dismiss the United States’ Damages Claim and to Strike the Jury Demand as well as certain portions of its Reply in Support of Its Motion to Dismiss the United States’ Damages Claim and to Strike the Jury Demand. *See* ECF Nos. 731 & 732. The basis for sealing is that the exhibit and reply brief contain material designated as confidential or highly confidential pursuant to the operative protective order in this action. *See* ECF No. 732. The exhibit and reply brief contain information from Plaintiffs’ expert reports, which include confidential or highly confidential information designated by Google or third parties, as well as information of a personal nature regarding a Department of Justice attorney. The United States believes that the majority of the material in the exhibit and reply brief need not remain sealed, with the exception of the portion of Exhibit 22 containing said personal information. The United States has redacted that portion of Exhibit 22 in the attached proposed revised exhibit for the Court’s consideration. Accordingly, the United States requests that the Court grant Google’s motion to seal in part.

ARGUMENT

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

The United States recognizes that the standard for sealing under Local Civil Rule 5 and Fourth Circuit precedent is stringent and reflects a strong presumption in favor of public court proceedings and court filings. The United States respectfully requests that the information about a personal engagement of a Department of Justice attorney contained in Exhibit 22 remain under seal. The proposed Exhibit 22 attached to this response includes those proposed redactions. The United States submits that these redactions are appropriate to protect personal privacy, and that such protection for non-relevant information outweighs the public interest in this material.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant Google’s motion in part and maintain under seal certain personal information in Exhibit 22.

Dated: June 12, 2024

Respectfully submitted,

JESSICA D. ABER
United States Attorney

/s/ Gerard Mene
GERARD MENE
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3777
Facsimile: (703) 299-3983
Email: Gerard.Mene@usdoj.gov

/s/ Julia Tarver Wood
JULIA TARVER WOOD
MICHAEL E. WOLIN
AARON M. TEITELBAUM

United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 7100
Washington, DC 20530
Telephone: (202) 307-0077
Fax: (202) 616-8544
Email: Aaron.Teitelbaum@usdoj.gov

Attorneys for the United States